

REMARKS/ARGUMENTS

1. Summary of the Office Action

Claims 1-3, 5-14, 16-18 and 20 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Publication No. 2001/0032269 A1 (hereinafter Wilson).

Claims 4, 15 and 19 stand rejected under 35 U.S.C. § 103(a), as being allegedly unpatentable over Wilson in view of U.S. Patent No. 6,584,111 (hereinafter Aweya).

2. Response to Specification and Claim objections

The specification and claims have been amended to overcome the objections. The Examiner is thanked for a careful review of the application.

3. Response to 35 U.S.C. § 102 Rejections

In response to the above Office Action, the Applicants have amended the claims and respectfully request reconsideration thereof. All the amendments are supported by the specification as originally filed, in particular, [0053], [0055] and the abstract. Accordingly, no new matter has been added.

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicants contend that each and every element of the present claims is simply not found in Wilson. Wilson teaches a network system with a sending host configured to monitor acknowledgement packets and to adjust the packet traffic based on whether the acknowledgement packets are marked with a congestion indicator.

However, Wilson does not teach the present invention. In particular, Wilson fails to teach or suggest the present method of “organizing the packet round trip time measurements as an invariant distribution; **applying an analytical tool to the invariant distribution to derive a plot exhibiting periodic peaks; and extracting information from the periodic peaks regarding congestion conditions within the network**” (Claim 1).

Indeed, nowhere in Wilson is there any mention or suggestion of applying an analytical tool to the invariant distribution of the round trip time measurements to derive a plot exhibiting periodic peaks. At best, Wilson only teaches that the “average and standard deviation of Round Trip Time (RTT) was measured using the Internet Engineering Task Force (IETF) recommended algorithm”. Such measurement of the average and standard deviation of the round trip time using IETF does not produce a plot exhibiting periodic peaks as in the present claims (See, e.g. Wilson’s Figures 7-9 which do not reveal any periodicity information).

In addition, the present claims include the feature of identifying congestion conditions within the network from the periodic peaks of the plot. Wilson does not teach generating a plot exhibiting periodic peaks, let alone extracting information from the periodic peaks regarding congestion conditions.

Wilson clearly fails to teach or even suggest each and every element of the present claims. Therefore, the present claims are patentable over Wilson.

4. **Response to 35 U.S.C. § 103(a) Rejections**

Claims 4, 15 and 19 stand rejected under 35 U.S.C. § 103(a), as being allegedly unpatentable over Wilson in view of Aweya.

As established above, Wilson fails to anticipate the present claims wherein an analytical tool is applied to the invariant distribution of the round trip time to derive a plot exhibiting periodic peaks and extracting information from the periodic peaks regarding network congestion conditions.

Even the additional teachings of Aweya fail to correct the deficiencies of Wilson. Aweya teaches a method for providing a flow control solution using a wavelet transform-based filtering

mechanism. However, Aweya fails to mention that the wavelet transforms is applied to a invariant distribution of the round trip time to derive a plot exhibiting periodic peaks and extracting information from the periodic peaks regarding congestion conditions within the network. On the contrary, Aweya applies wavelet transform-based filter to an ATM network so as to filter high-frequency fluctuations due to Variable Bit Rate traffic from the Constant Bit Rate / Variable Bit Rate traffic to determine the underlying trend of the network traffic (Abstract). It will also be noted that Aweya specifically teaches that the "switch congestion state is determined based on the current ABR traffic, the filtered CBR/VBR traffic, and the current status of buffers in the switch" (Abstract). Clearly, Aweya's approach to determine the congestion status of the network is significantly different from the present application. Accordingly, the present claims are patentable over Wilson in view of Aweya.

5. Conclusion

Having tendered the above remarks and amended the claims as indicated herein, the Applicants respectfully submit that all rejections have been addressed and that the claims are now in a condition for allowance, which is earnestly solicited.

If there are any additional charges, please charge Deposit Account No. 02-2666. If a telephone interview would in any way expedite the prosecution of the present application, the Examiner is invited to contact Jaina Chua at (408) 947-8200.

Respectfully submitted,

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